

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * CRIMINAL NO.: 11-169

*** SECTION: “I” (5)**

STOLTHAVEN NEW ORLEANS, LLC *

*** * ***

JOINT FACTUAL BASIS

The parties hereby agree this Joint Factual Statement is a true and accurate statement of the defendant’s criminal conduct, and it provides a sufficient basis for the defendant’s plea of guilty to the charges contained in the Bill of Information which is described in the above captioned matter and as set forth in the plea agreement signed this same day, and had this matter proceeded to trial, the following facts would be established beyond a reasonable doubt through competent evidence and testimony.

The defendant **STOLTHAVEN NEW ORLEANS, LLC** (hereinafter referred to as **STOLTHAVEN**), located at 2444 English Turn Road, Braithwaite, Louisiana, in the Eastern District of Louisiana, operated a bulk liquid storage and transfer terminal (hereafter sometimes referred to as “Facility”). Various products were received by rail, truck, barge, or ship and stored

in fixed roof tanks at the Facility. The tanks stored hazardous and toxic products and/or nonhazardous and non- toxic products. The Facility is located adjacent to the Mississippi River which is a navigable water of the United States.

In April 2005, Company A contracted with **STOLTHAVEN** to store a solution of fluorosilicic acid (FSA). FSA is a solid waste that is characteristically hazardous for corrosivity. Company A used a high concentration of FSA for metal etching capabilities in electronics manufacturing of circuit boards and chips. According to the Material Safety Data Sheet (MSDS), FSA is toxic by inhalation, ingestion and contact with the skin.

Company A requested that **STOLTHAVEN** store the FSA in a rubber lined carbon steel tank. Based upon **STOLTHAVEN**'s representations that a Plasite 4100 ("Plasite") lined tank was suitable for storage of FSA and that a rubber lined carbon steel tank would ultimately cost more to Company A because of the installing and de-installing than a Plasite lined tank, the parties agreed to store the FSA in a Plasite lined tank , specifically tank H 30-1.

From April 2006, until January 22, 2007, the FSA was stored in tank H 30-1, which was lined with Plasite. In January 2007, a leak of approximately 2,250 gallons occurred. In order to repair tank H 30-1, **STOLTHAVEN** moved the FSA to tank C 15-16. On February 5, 2007, unrelated to the Plasite coating, the FSA leaked through the stainless steel flex hosing on the outside of tank C 15-16, which caused a release of approximately 32,000 gallons of FSA. When this leak occurred in the flex hosing, **STOLTHAVEN** had an empty tank located on the Facility which enabled **STOLTHAVEN** to immediately transfer the remaining FSA from tank C 15-16 to the empty stainless steel tank. After tank C 15-16 was repaired, the FSA was transferred back to

C 15-16 and remained there through April 21, 2007, at which time it was transferred back to H 30-1. On or about November 10, 2007, the FSA was transferred back to C 15-16 where it remained until March 17, 2008.

On or about March 10, 2008, C 15-16 started leaking FSA. On March 17, 2008, there was a different leak in tank C 15-16 resulting in FSA spewing from a ruptured tank wall at the rate of approximately fifty (50) gallons per minute. The FSA flowed into a containment area. There was a risk that the FSA would make contact with adjacent tanks and piping. Some of the adjacent tanks and piping systems were made of a less resistant grade of steel than C 15-16 and thus the FSA could have damaged them.

The Louisiana Department of Environmental Quality (LDEQ), the Louisiana State Police (LSP), and the United States Coast Guard (USCG) were called out to the Facility to comprise a Unified Command (“UC”). A **STOLTHAVEN** representative informed the UC that the FSA could compromise other components at the Facility and if allowed to remain, the FSA would mix with other materials stored at the Facility with possible results.

The **STOLTHAVEN** representative informed the UC that **STOLTHAVEN** did not have an empty tank in which to transfer the FSA. The **STOLTHAVEN** representative stated the only option available to avoid the potential mixing of materials/chemicals was to discharge the FSA into the Mississippi River. Based upon the facts as presented by the **STOLTHAVEN** representative, the UC, in order to avert an even greater threat to human health and the environment, granted **STOLTHAVEN**’s request and allowed the discharge of approximately 454, 465 gallons of FSA product into the Mississippi River. The public water system intake for

the cities of Belle Chase, Louisiana, and Port Sulphur, Louisiana, was shut down for several hours to avoid contamination to the water systems, though no contamination to the water systems occurred. Additionally, the Mississippi River had to be monitored extensively throughout the entire time of the discharge.

STOLTHAVEN documents indicate that **STOLTHAVEN** became aware that storing FSA in a Plasite lined tank was not adequate to protect the tank from the corrosive effects of FSA. Due to the problem with leaks which occurred in the tanks that stored the FSA, **STOLTHAVEN** management directed **STOLTHAVEN** employees to “shift the FSA around from tank to tank until the contract with [Company A] expired.”

On or about March 10, 2008, a **STOLTHAVEN** senior operations manager sent an email to certain **STOLTHAVEN** employees stating that there was a small leak of FSA from tank C 15-16. **STOLTHAVEN** took no action to move the FSA to another tank, nor did **STOLTHAVEN** obtain a clean empty stainless steel tank, rail car or barge for emergency purposes in the event of a leak, such as the one in February 2007.

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, makes it a crime to negligently discharge a pollutant from a point source into a water of the United States without a permit or in violation of the terms of a permit. 33 U.S.C. §§ 1311(a), 1319(c) (1) (a), and 1342. Fluorosilicic acid is a pollutant under the Clean Water Act.

A representative from the Louisiana Department of Environmental Quality (“LDEQ”) would testify as follows that **STOLTHAVEN** operated its Facility pursuant to a permit issued by LDEQ, specifically NPDES permit #LA 0114405 and **STOLTHAVEN** was required to maintain

its equipment and to operate its Facility in a manner prepared for emergency situations at the Facility Mississippi River in order to avert the threat of harm to human health and the environment.

STOLTHAVEN admits that it had knowledge of the corrosivity of FSA and of the past leaks which had occurred. **STOLTHAVEN** further admits that it was negligent in not having a storage tank or other provision available in the event of an emergency. **STOLTHAVEN** admits that the discharge of 454, 465 gallons of FSA into a navigable water of the United States, the Mississippi River, would not have occurred had **STOLTHAVEN** used a rubber-lined tank to properly and safely store the FSA and had **STOLTHAVEN** had an emergency storage tank available on March 17, 2008. Through its negligence, which was not revealed to state and federal agencies, **STOLTHAVEN** placed the UC in a position of having to authorize the discharge of the FSA into the Mississippi River in order to avoid a greater threat of harm. **STOLTHAVEN** acknowledges that the emergency authorization by the UC of the FSA discharge did not constitute a permitted discharge within the meaning of the Clean Water Act.

STOLTHAVEN NEW ORLEANS, LLC

By: (Date)

Dorothy Manning Taylor (Date)
Assistant United States Attorney

Harry Rosenberg (Date)
Attorney for the defendant